

THE MILITARY CHAPLAINCY AND THE CONSTITUTION

A RESEARCH PAPER

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INTRODUCTION

Historically the United States has always identified itself with God. Our national motto is "In God We Trust." We emblazon this upon our coins for all the world to see. In the Pledge of Allegiance to the Flag we lay claim to being, "One Nation Under God." At the same time our nation has always been careful to adhere to the principle of separation of church and state, although many influential people, throughout history, have held opposing views in interpreting this principle. Today, perhaps more than ever before, United States citizens are questioning the separation of church and state principle.

One of the most striking characteristics of this age is the rapid and permeating extension of the state into the lives of the individual. In recent years the state has assumed many tasks that were formerly deemed the responsibility of the church. Since the state is penetrating the life of the family with increasing fervor the issue of church and state separation is causing more and more concern for the average citizen. Consequently the issue of the military chaplaincy is also being questioned to a greater degree than normal, and with a new enthusiasm. This is especially true among the younger

generation, more commonly called the "Romantic Generation."¹

In addition the war in Vietnam brought into focus the Christian's responsibility to his government, especially in the matter of bearing arms in its defense. There is a wide variety of opinion on this subject, ranging from dove-like pacifism to militant chauvinism. It is not my aim to defend either extreme, only to point out that the issue of the military chaplaincy is also brought to task as a result of these two opposing factions.

For many the military chaplaincy does not contradict the separation of church and state principle. Others would feel that it violates the principle of church and state separation, and is therefore unconstitutional. Consequently for the purpose of this paper I would ask the following question: Does the military chaplaincy pose a conflict between three basic tenets of American life; 1) The principle of religious freedom, 2) The separation of church and state, 3) The establishment clause of the United States Constitution which provides that, "Congress shall make no law respecting the establishment of religion, or prohibit the free exercise thereof." ² On the other hand the Constitution provides that, "no religious test shall ever be required as a qualification to any office or public trust under the United States."³ These two principles

¹Peter F. Drucker, Man, Ideas and Politics, (Harper and Row, 1969), P. 105.

²U.S., Constitution, Amendment I.

³U.S., Constitution, Art. VI

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mark the finale of centuries of bitter struggle.

Since the enactment of the Constitution in 1789, the Federal government has exercised great care not to trespass upon ecclesiastical territory. It has not favored any single religious group and has avoided any thought of establishing a State church as such. Throughout history the Supreme Court has been, for the most part, judicious in its judgments on borderline cases of jurisdiction and has rigidly adhered to the provisions of the Constitution that "no religious test shall ever be required as a qualification to any office or public trust under the United States"⁴ and that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."⁵ In reviewing the decisions of the Supreme Court which deal with church and state separation it is evident that "implicit in the First Amendment is the guarantee that religion in its various denominational forms may be freely exercised and propagated."⁶ Dealing with this fact in relationship to the military chaplaincy will be the subject for the remainder of this paper.

⁴U.S. Constitution, Art. VI

⁵U.S., Constitution, Amendment I.

⁶Eugene F. Klug, Church and State Under God, ed. by Albert G. Huegli (St. Louis: Concordia Publishing House, 1964) p. 365

CHAPTER I

HISTORY OF THE MILITARY CHAPLAINCY

The institution of the military chaplaincy has a long history, as old as the history of military operations. In the United States there were chaplains attached to many of the forces engaged in early struggles against the Indians and the French. It was very natural for units of the Revolutionary Militia to have the town clergyman serving as the commander. He also acted as the designated chaplain.

At the outset of the Revolutionary War each Colony had a separate plan for the chaplaincy. Some were appointed by the Governor, some by the colonial legislature, some by the established Church, and some by the brigade officers themselves. In each case the chaplain represented the religion or religious denomination desired by a majority of the troops he served.

General Washington is often credited with helping to establish the military chaplaincy. Washington brought to the Army experience from the French wars and from peacetime militia patrols. This knowledge included an appreciation of the importance of a competent chaplaincy. However, the legal origin of the Corps of Chaplains is found in a Resolution of the Continental Congress, adopted 29 July 1775, which stated that

the pay of chaplains should be 20⁵ dollars per month, the same as that provided for a captain by the same resolution. The original Rules and Articles of War, adopted 20 September 1776, assumed that chaplains would be commissioned to regiments, companies, troops, or garrisons. In addition to these types, the Continental Army had hospital chaplains, a German chaplain at large, a chaplain missionary to the friendly Indians and one division chaplain at headquarters. Many prominent clergymen of that time saw a period of service as chaplains during the Revolution.

The virtual disbanding of the Army in 1783 left no chaplains in the national service. On 3 March 1791, the Army was again increased to a brigade and the President was authorized to appoint a chaplain. The Reverend John Hurt, an Episcopal clergyman who had served as a chaplain during the Revolution, became the first Regular Army chaplain and was assigned to the single brigade constituting the Regular Army at that time. He is considered and accorded the honor of being the first chaplain of the Army of the United States.

In the War of 1812 chaplains were appointed to each regiment. Following that war, there was again but one chaplain in the peacetime Army, and he was stationed at West Point where he also served as a professor of geography, history, and ethics. In 1838 Congress authorized the appointment of 20 chaplains to serve at Army posts and charged them with the additional responsibility of teaching school.

The Mexican War again necessitated the appointment of regimental chaplains. Two Roman Catholic priests were

appointed to be chaplains-at-large in Taylor's Army. In 1840 the number of chaplains in the Regular Army was fixed at 30.

In 1861 regimental chaplains were again authorized in the Regular Army and provisions were made to include a quota for Jewish rabbis. During the Civil War, there was a great revival of religious feeling and a consequent increase in desire of the people and the troops to have military chaplains. The work of official chaplains at posts, in hospitals, and in regiments was supplemented by unofficial chaplains employed by church commissions and some independent volunteers.

The Army Chaplaincy was reduced to 34 after the Civil War. Around the turn of the century Congress strengthened the requirement of ecclesiastical endorsement by official church agencies. The Episcopal Church was the first to set up a regular commission for this, and it was at this time that the Military Ordinariate of the Roman Catholic Church was established. In 1878 a chaplain was put in charge of education for the entire Army.

At the outbreak of World War I there were 146 Regular Army and National Guard chaplains. A total of 2,363 were commissioned and served during the period of that war. Early in 1918, General Pershing called Bishop Charles A. Brent to be his Chief of Chaplains. His work as senior chaplain at American headquarters in France during World War I showed the need for a permanent Chief of Chaplains. The National Defense Act of 1920 provided for this office, and the Chaplains Corps or Branch was established as such at that time. During World War I a training school for chaplains was inaugurated

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and continued for several years, to be reactivated in 1942.

In World War II a total of nearly 8,896 chaplains served in the Army, distinguishing themselves in all theaters and winning the acceptance and support of all ranks. 2,395 decorations were awarded Army chaplains in that war.

After World War II the number of chaplains on active duty was reduced with the reduction in military forces. The sudden outbreak of war in Korea in 1950 created new recruitment problems. The Reserve chaplains were extensively drawn on until the flow of new appointments reached sufficient proportions.

During the conflict between South and North Vietnam nearly all military chaplains served at least one tour. The tour was one year in length. During this conflict the chaplains continued to serve with distinction and valour.

Today there are approximately 2500 chaplains for all services. All major faiths are represented. These chaplains continue to fulfill their mission to bring men to God and God to men.

CHAPTER II

THE MILITARY CHAPLAINCY VERSUS THE CONSTITUTION

From the end of the Revolutionary War until the Civil War the military chaplaincy was marked by many uncertainties.⁷ During this period the Army quotas for chaplains were not always filled due to a significant number of civilian clergy who felt that the chaplain's function was not clearly defined. Many felt that the chaplain was a kind of catchall for various peripheral duties. This did not conform with their view of being a spiritual leader. Then, too, "the institution itself fell into disfavor because being appointed as a chaplain was considered by many as a political plum, to be held along with a civilian job."⁸

In the late 1840's the military chaplaincy was faced with new and more serious criticism. The critics felt that it was unconstitutional for a chaplain to be paid by the government. They specifically pointed to the chaplains in the Congress and to those assigned to the Indian stations. The opposition criticized this policy on the basis that it

⁷ Department of the Army, American Army Chaplaincy-A Brief History, PAM 165-1 (Washington: U.S. Government printing Office, Oct. 1955), p.2-5

⁸ Kluwe, op.cit., footnote 6, p.367

produced a conflict between the functions of the church and the state. The criticism against the military and government chaplaincies continued to grow until finally in 1852-53 the members of Congress became involved.

Those who opposed the military chaplaincies spoke from diverse convictions. But, as they saw it, the core of the problem was that the church and the state were not being kept absolutely separate. In spite of the opposition the government chaplaincies continued to exist with the support of the legislative and judicial branches of government.

However, the opposition in the future was not to be taken lightly. Included in the arguments against the chaplaincies were the significant opinions of James Madison. His "Detached Memoranda" contains the following paragraphs:

..."(b)etter also to disarm in the same way, the precedent of Chaplainships for the army and navy, than erect them into a political authority in matters of religion. The object of this establishment is seducing; the motive to it is laudable. But is it not safer to adhere to a right principle, and trust to its consequences, than confide in the reasoning however specious in favor of a wrong one? Look thro' the armies and navies of the world, and say whether in the appointment of their ministers of religion, the spiritual interest of the flocks or the temporal interest of the Shepherds be most in view: whether here, as elsewhere, the political care of religion is not a nominal more than a real aid. If the spirit of armies be devout, the spirit out of the armies will never be less so; and a failure of religious instruction and exhortation from a voluntary source within or without, will rarely happen: and if such be not the spirit of armies, the official services of their teachers are not likely to produce it. It is more likely to flow from the labours of a spontaneous zeal. The armies of the Puritans had their appointed Chaplains; but without these there would have been no lack of public devotion in that devout age.....

The case of navies with insulated crews may be less within the scope of these reflections. But it is not

entirely so. The chance of a devout officer, might be of as much worth to religion, as the service of an ordinary chaplain (were it admitted that religion has a real interest in the matter). But we are always to keep in mind that it is safer to trust the consequences of a right principle than reasonings in support of a bad one

.....
The establishment of the chaplainship to Congress is palpable violation of equal rights, as well as of constitutional principles: The tenets of the chaplains elected (by the majority) shut the door of worship against the members whose creeds and consciences forbid a participation in that of the majority. To say nothing of other sects this is the case with that of Roman Catholics and Quakers who have always had members in one or both of the Legislative branches. Could a Catholic clergyman ever hope to be appointed a Chaplain? To say that his religious principles are obnoxious or that his sect is small, is to lift the evil at once and exhibit in its naked deformity the doctrine that religious truth is to be tested by numbers, or that the major sects have a right to govern the minor!"¹⁰

The judiciary committees of both houses considered the matter, and the verdict, as given in the Senate committee report, was that neither the letter nor the spirit of the First Amendment of the Constitution of the United States was violated by the military or Congressional chaplaincies. The reply included the opinion that there had been no establishment or endowment of a particular religious society, no privileged or preferred status had been granted to any religious denomination, and no penalties had been inflicted on any dissenting individual or group for failure to participate. "It is not seen, therefore," the report concluded, "how the institution of chaplains is justly obnoxious to the reproach of invading religious liberty in the widest sense of the term."¹¹

⁹Rev. Charles C. Pise, a Roman Catholic, was appointed Chaplain to Congress in 1833.

¹⁰Madison's Detached Memoranda, as quoted in Leo Pfeffer, Church, State, and Freedom, (The Beacon Press, 1967) p.250

¹¹Ibid.,p.251

This particular challenge had been presented primarily against congressional chaplaincies. Accordingly the decision made by the judiciary committees of the 32nd Congress was a key factor in all future judgements involving chaplains.

In 1854 there were additional attempts at eliminating chaplaincies on constitutional grounds. There was an appeal to Article Six of the Constitution, which required that no religious test shall be required as a qualification to any office or public trust under the United States. However, Congress was not convinced that this in any way involved the position of the chaplains. The reply of the Judiciary Committee of the House of Representatives in 1854 is significant in this connection:

"While your committee believe that neither Congress nor the army and navy should be deprived of the service of chaplains, they freely concede that the ecclesiastical and civil powers have been, and should continue to be, entirely divorced from each other.... There is a great and very prevalent error on this subject in the opinion that those who organized this government did not legislate on religion. They did legislate on it by making it free to all, "to the Jew and the Greek, to the learned and unlearned." The error has risen from the belief that there is no legislation unless in permissive or restricting enactments. But making a thing free is as truly a part of legislation as confining it by limitations; and what the government has made free, it is bound to keep free."12

On March 13, 1859, the House Judiciary Committee added this opinion to what had previously been stated:

The spirit of Christianity has ever had a tendency to mitigate the rigors of war, if as yet it has not been entirely able to prevent it; to lend to act of charity and kindness; and to humanize the heart. It

¹²The Chaplaincy in American Public Life, as quoted in Eugene F. Klug, Church and State Under God, ed. by Albert G. Huelgie (St. Louis: Concordia Publishing House, 1964) p.373

was true philanthropy, therefore, to introduce this mitigating influence where, of all other places, its fruits were to be more beneficially realized, namely into the Army and Navy, and to abolish it, in this Christian age of the world, would seem like retrograding rather than advancing civilization. While much good and no perceptible evil has resulted from the practice; while no constitutional prohibitions exists in relation to it, and no tendency to a "religious establishment" is discernible under it; while diversity of truth is tolerated as freely as the constitutional requirement, in the minister, as well as in those for whom he officiates; and while the expense is so small as not to be felt by any one, your committee do not think it necessary to interfere with the office¹³ of chaplain, as it exists in the Army and Navy.

This statement is an excellent summary of the position which the United States government has continued to hold to the present.

The most recent challenge on the chaplaincy was brought in a suit against the Treasurer of the United States by Frank C. Hughes of Minneapolis, a professed atheist who repeated the charge (advanced on several earlier occasions by the American Association for the Advancement of Atheism) that it was unconstitutional to pay the salaries and allowances of chaplains out of tax money. The case was dismissed by Judge Edward A. Tamm in December, 1955, in the Federal District Court at Washington, D.C., on grounds that the it was not the purpose of the First Amendment to divorce religion from government or to impose neutrality between believers and non-believers but only to meet in a a practical manner the problems raised by a multiplicity of competing sects.¹⁴

¹³Ibid., p.373

¹⁴Leo Pfeffer, Creeds in Competition (Boston: Beacon Press, 1967), p. 48.

It is obvious that our government has spent a great deal of tax money on the military chaplaincy program. It would seem that the government's thinking on the arrangement is basically still the same as it was when the Constitution of the United States was written. "In return for the many benefits which accrue to it, government is ready to assume the the financial cost of the spiritual ministry which the chaplains render to the citizens of the Unites States of America under arms."¹⁵

However, this does not basically answer the question as to the legality of the military chaplaincy. When one attempts to answer the question, "Is the government chaplaincies consistent with the establishment clause of the constitution," there are several important factors to be remembered. First of all, one must remember that the most important factor for our nation is self-preservation. As a result, the military is of primary importance since a nation has the right to defend herself at any expense, even if a draft is required. Therefore it is the right of the government to impinge upon a constitutional right when there is a higher need to be met, but only to the extent necessary to meet that need.

On this basis we could argue for or against the military chaplaincy using the First Amendment as grounds for the argument. Leo Pfeffer's book on Church and State contains the following paragraph:

Some of the cited practices may be constitutional under any view of the First Amendment. Chaplains

¹⁵Eugene F. Klug, op. cit., footnote 12, p.388

in the armed forces may be necessary under the constitutional guarantee of freedom of conscience. A soldier drafted into the armed forces and sent to camp far from his home is deprived of the opportunity to visit his church. To the extent that such deprivation is necessary to the overriding consideration of national defense, it is constitutional. But the deprivation is constitutional only to the extent that it is necessary; and if the government can practicably furnish a substitute in the form of a traveling church, the soldier may well have a constitutional right thereto. So too, much of the exemption that religion enjoys under tax laws may likewise be justified under the "free exercise" clause.

.....
 The religious freedom guaranteed in the First Amendment may constitutionally be restricted where necessary for the protection of an interest deemed more important to the community than the unrestricted exercise of religion.¹⁶

In today's contemporary view of the military chaplaincy it is felt that the chaplain has a dual task: to foster morals and high morale in the Armed Services and to provide for military personnel the rights and privileges of religious worship. To this end commanding officers are instructed to make provisions for religious worship and to encourage attendance at the same time for all men under their command. Many would feel that it is questionable for a chaplain to be involved in the task of increasing morale in the unit to which he is assigned. However, this does not seem to be in contradiction to biblical times.

Moses commanded the Israelites that:

When thou goest out to battle against thine enemies, and seest horses and chariots, and a people more than thou, be not afraid of them; for the Lord thy God is with thee, which brought thee up out of the land of Egypt. And it shall be, when ye are come nigh unto the battle, that the priest shall approach and speak unto the people, and shall say unto them, Hear, O Israel, ye approach this day unto battle

¹⁶ Pfeffer, op.cit., footnote 10, p. 169

against your enemies: let not your hearts faint, fear not, and do not tremble, neither be ye terrified because of them: For the Lord your God is he that goeth with you, to fight for you against your enemies, to save you.¹⁷

Consequently it seems justifiable that one of the minor roles of the chaplain is to enhance morale among the personnel of his unit. Therefore, in reality, the chaplain as an Officer fulfills one function for the government and another simultaneously for the church, carrying out the vows of the ministry which he made to God and the church he represents. The government's primary concern, as seen in the regulation governing the chaplaincy, is that there must be equal opportunity for all, within the bounds of the reasonable, and that none be made to conform to any establishment of religion, however benign and well-intentioned it may be. In the majority of cases the standard policy and practice of the services have been in accord with these principles.

Perhaps for the government and the church, the rationale for the military chaplaincy, can be summarized by quoting the National Council of Churches National Study Conference on Church and State. (Columbus, Ohio, 1964) The statement from the "Military and Institutional Chaplaincies" reads as follows:

When the State for its own proper purposes separates certain of its citizens from their home communities for extended periods of time, it must not thereby deprive them of opportunities for the free exercise of religion. Therefore, when the State assumes so great a role in the lives of those affected, it must at the same time make possible the practice, nurture and appropriate propagation of religion in a manner as close to normal as it can. To meet these needs

¹⁷Deuteronomy 20: 1-4 (King James Version)

the provision of chaplaincies, with attendant physical facilities, is the proper responsibility of the government.¹⁸

¹⁸Klug, op.cit., footnote 12, p. 388

CONCLUSION

Although in some cases our forefathers felt that the government chaplaincies was a breach of religious liberty, the Legislative and Judicial branches of our government have upheld the institution of the chaplaincies, military or congressional. Yet uppermost in the minds of our congressional leaders is the concept of religious liberty and the separation of church and state. Therefore, all religious denominations are normally impartially regarded. As a result, the largest religious denominations as well as the smallest, in most cases, feel that there is no violation of the First Amendment in establishing the chaplaincy.

Today there are many who look upon the military chaplaincy as a violation of the constitution. Among these are such groups as the American Association for the Advancement of Atheism, extreme church pacifists, and a conscientious minority of American citizens who believe that chaplains should be supported by the churches themselves and carry no rank.

The Scriptures plainly teach that God ordained human government.¹⁹ They denounce the extreme individualism which allows every man to do that which is right in his own eyes.

¹⁹Romans 13:1-7; I Peter 2:13-17

Our society feels that government is responsible for the maintenance of order, justice, and freedom. Only when the will of God and the will of the state are definitely opposed is the Christian justified in violating governmental directives.²⁰ I would feel that the governmental chaplaincies present no conflict between the directives of the state and the directives of the church.

While there are many arguments for and against the military chaplaincy it would seem that the present system has been very successful in fulfilling the needs of the serviceman. As a general rule this has been accomplished without a great deal of offense to the nation or to the individual who supports it.

With regards to the military chaplaincy, one would conclude then, that the basic solution is not God or Caesar, but God and Caesar. Though the Christian is not of this world, he is in it. As long as he is, he must exert every effort to teach and feed the flock of Jesus Christ.

²⁰ Act 5:29

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